U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA J. NORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Albany, NY

Docket No. 98-259; Submitted on the Record;
Issued September 7, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a back injury on November 27, 1995, in the performance of duty, causally related to factors of her federal employment.

The Board finds that this case is not in posture for decision due to a conflict in medical opinion evidence.

On November 27, 1995 appellant, then a 60-year-old rural associate mail carrier, filed a claim alleging that she sustained back injury between her shoulder blades from lifting and carrying trays of mail.

By report dated November 27, 1995, Dr. Michael M. Tersegno, a Board-certified radiologist, reviewed appellant's x-rays and noted "no acute fracture or dislocation. Mild degenerative changes are evidence." Added to the bottom of the report were the typed words: "Chiropractic subluxation, left lateral flexion subluxation -- T4 on T5."[1]

However, by report dated November 29, 1995, Dr. David F. Petters, a chiropractor, noted the date of injury as November 27, 1995, interpreted his x-rays and opined that appellant had a thoracic subluxation and was disabled from her regular work. Subsequent duty status reports dated from November 29, 1995 through February 2, 1996 repeated Dr. Petters' diagnosis and opinion on appellant's disability. Thereafter, Dr. Petters diagnosed "thoracic sprain/strain and subluxation,"

[1] Dr. Tersegno denied typing the addendum to the report and stated that if there was a subluxation, he would have so noted it in his report.

An Office of Workers Compensation Programs medical adviser reviewed all of appellant's x-rays and opined that they did "not reveal evidence of subluxation as this condition is defined for the purposes of FECA."

By decision dated March 28, 1996, the Office rejected appellant's claim finding that the evidence of record failed to demonstrate that an injury was sustained as alleged. The Office found that the weight of the medical evidence was the reports of Dr. Tersegno and the Office medical adviser.

Appellant requested a hearing and in support she submitted an April 19, 1996 report from Dr. Petters who noted that he was enclosing his November 27, 1995 report based upon his x-rays ordered and obtained at that time. The November 27, 1995 report reported thoracic spine x-rays as demonstrating "left lateral flexion subluxation T4 on T5, overall left rotation of all thoracic segments, most prominent at T9 and T10 and hypertrophic spurring at right body margins T8-9 and T9-10, most prominent at the latter."

At the hearing, Dr. Petters testified that he had x-rays taken on November 27, 1995 and that from these x-rays he diagnosed subluxations.

By decision dated January 10, 1997, the hearing representative found that the weight of the medical opinion was the reports of the Office medical adviser and Dr. Teregno, who both were Board-certified radiologists.

The Board took jurisdiction of appellant's case on October 22, 1997, such that the subsequent nonmerit decision of the Office is null and void for lack of jurisdiction

Appellant has the burden of proving by the weight of reliable, probative and substantial evidence that the condition claimed was caused or aggravated by her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the condition claimed and her federal employment.[2] Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions or factors, is sufficient to establish causal relationship.[3] Causal relationship is medical in nature and can be established only by medical evidence.[4]

Section 8101(2) of the Federal Employees' Compensation Act[5] provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable

[2] *Steven R. Piper*, 39 ECAB 312 (1987); *Ronald K. White*, 37 ECAB 176 (1985); *Harold Hendrix*, 1 ECAB 54 (1947); *see* 20 C.F.R. § 10.110(a).

[3] *Manuel Garcia*, 37 ECAB 767 (1986); 20 C.F.R. § 10.110(a); *see George Axelrod*, 15 ECAB 235 (1964); *Maria Olivencia Valentin*, 7 ECAB 665 (1955); *see also Vernon O. Fein*, 34 ECAB 78 (1982).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[5] 5 U.S.C. § 8101(2).

services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[6]

Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[7]

However, in this case, appellant's chiropractor, Dr. Petters, noted the date of injury as November 27, 1995, obtained x-rays and diagnosed subluxations based upon those x-rays. A chiropractor may interpret his or her own x-rays to the same extent as any other physician defined under the Act.[8]

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." There is such a conflict in this case between Dr. Petters and Dr. Teregno and the Office medical adviser.

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an impartial examination and a rationalized medical opinion to resolve the medical conflict regarding whether she sustained thoracic spinal subluxations on November 27, 1995 as alleged.

[6] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services). *See also Linda Holbrook*, 38 ECAB 229 (1986).

[7] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

[8] *See Carol A. Dixon*, 43 ECAB 1065 (1992) (The term "subluxation" means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebra anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays.)

Therefore, the decision of the Office of Workers' Compensation Programs dated January 10, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, D.C.
September 7, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member